

# Climate Assessment

Office of Legislative Oversight

## Expedited Tenant Displacement – Right of First Refusal to Buy Rental Housing – Amendments

### SUMMARY

The Office of Legislative Oversight (OLO) anticipates Expedited Bill 38-23 will likely have an indeterminate impact on the County's contribution to addressing climate change as access to affordable housing increases community resilience and the proposed change is intended to simplify the process of buying rental housing for the purpose of creating affordable housing. However, it cannot be predicted how much affordable housing will be created by this change.

---

### BACKGROUND AND PURPOSE OF EXPEDITED BILL 38-23

Right of first refusal is defined as a contractual right that allows an interested party, like a local government agency, the first right to purchase a property. Government agencies can use the right of first refusal to acquire private property for sale as long as it matches the price of any third-party offer.<sup>1</sup> Governments often use this power to preserve affordable housing and prevent the conversion of subsidized rental properties for another use, if it is sold to another buyer.<sup>2</sup>

As established in the County Code, a rental housing owner must offer the County, Housing Opportunity Commission (HOC), and any tenant organization the right to buy the property before selling the rental housing to another party, barring certain exceptions as defined in the County Code.<sup>3</sup> Expedited Bill 38-23 would amend the County Code to allow the County Executive to designate a qualified entity that may exercise the right of first refusal.<sup>4</sup> Housing developers are considered a qualified entity if they “demonstrate experience and commitment to owning and operating affordable housing through an application process.”<sup>5</sup>

The proposed bill is intended to simplify the process by allowing the County, after exercising its right of first refusal, to then assign the right to purchase to a qualified entity. In a memorandum from the County Executive included in the bill's introduction packet, it is stated that the amendment would relieve the County of the necessity of purchasing a property and then having to sell it to a development partner, which requires the County to quickly have funds available for the purchase of property.<sup>6</sup> Further, Bill 38-23 would place a 5% cap on the deposit an owner can charge if the right of first refusal is exercised, consistent with industry norms.<sup>7</sup>

Expedited Bill 38-23, Tenant Displacement – Right of First Refusal to Buy Rental Housing – Amendments, was introduced by the Council on behalf of the County Executive on September 26, 2023.<sup>8</sup>

## ANTICIPATED IMPACTS

The affordability of a community's housing stock has a direct correlation to the overall resilience of a community, and on its ability to prepare for current and future risks.<sup>9</sup> Affordable housing can improve community resilience through two ways: increasing housing stability and alleviating cost-burdened households. Housing stability can increase community resilience, through enhancing social cohesion by building community ties and enabling residents to stay better connected during emergencies. Cost-burdened households, which are households that spend over 30% of income on housing, generally have less cash on hand to weather shocks, such as extreme weather events, compared to households that are not cost-burdened.<sup>10</sup>

The bill proposes changes that are intended to simplify the process of acquiring rental housing for the purpose of creating affordable housing. Increased access to affordable housing increases community resilience; however it cannot be predicted how much affordable housing will be created by this change. OLO anticipates Expedited Bill 38-23 will have an indeterminate impact on the County's contribution to addressing climate change, including the reduction and/or sequestration of greenhouse gas emissions, community resilience, and adaptative capacity.

---

## RECOMMENDED AMENDMENTS

The Climate Assessment Act requires OLO to offer recommendations, such as amendments or other measures to mitigate any anticipated negative climate impacts.<sup>11</sup> OLO does not offer recommendations or amendments as Expedited Bill 38-23 is likely to have an indeterminate impact on the County's contribution to addressing climate change, including the reduction and/or sequestration of greenhouse gas emissions, community resilience, and adaptative capacity.

---

## CAVEATS

OLO notes two caveats to this climate assessment. First, predicting the impacts of legislation upon climate change is a challenging analytical endeavor due to data limitations, uncertainty, and the broad, global nature of climate change. Second, the analysis performed here is intended to inform the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

## PURPOSE OF CLIMATE ASSESSMENTS

The purpose of the Climate Assessments is to evaluate the anticipated impact of legislation on the County's contribution to addressing climate change. These climate assessments will provide the Council with a more thorough understanding of the potential climate impacts and implications of proposed legislation, at the County level. The scope of the Climate Assessments is limited to the County's contribution to addressing climate change, specifically upon the County's contribution to greenhouse gas emissions and how actions suggested by legislation could help improve the County's adaptive capacity to climate change, and therefore, increase community resilience.

While co-benefits such as health and cost savings may be discussed, the focus is on how proposed County bills may impact GHG emissions and community resilience.

---

## CONTRIBUTIONS

OLO staffer Kaitlyn Simmons drafted this assessment.

<sup>1</sup> ["Public Rights of First Refusal", The Yale Law Journal, 2020.](#)

<sup>2</sup> ["Rights of First Refusal", Local Housing Solutions, Accessed 9/27/2023.](#)

<sup>3</sup> [Montgomery County Code § 53A-4, Accessed 9/27/2023.](#)

<sup>4</sup> [Introduction Staff Report for Bill 38-23, Introduced September 26, 2023.](#)

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> ["The Community Resilience Benchmarks", Alliance for National and Community Resilience, 2019.](#)

<sup>10</sup> ["Equitable Adaptation Legal and Policy Toolkit: Resilient Affordable Housing, Anti-Displacement, and Gentrification", Georgetown Climate Center, Accessed 10/2/23 ; "Community Resilience: A Social Justice Perspective", Community and Regional Resilience Initiative, 2008.](#)

<sup>11</sup> Bill 3-22, Legislative Branch – Climate Assessments – Required, Montgomery County Council, Effective date October 24, 2022